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FRASER CLEMENS MARTIN & MILLER LLC 28366 KENSINGTON LANE PERRYSBURG, OH 43551				A, PHI DIEU TRAN
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CRAIG E. SHERRETT et al.

Appeal 2009-006144
Application 10/734,836
Technology Center 3600

Decided:¹ June 26, 2009

Before SALLY G. LANE, SALLY C. MEDLEY and MICHAEL P. TIERNEY, *Administrative Patent Judges*.

TIERNEY, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, Kensington Windows, Inc., under 35 U.S.C. § 134(a) from a final rejection of claims 1-20. Appellants request reversal of the Examiner's rejection of those claims. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

References Relied on by the Examiner

Mucaria	4,368,226	Jan. 11, 1983
Ford	4,459,789	Jul. 17, 1984
Hood	5,784,853	Jul. 28, 1998
Smith	6,108,999	Aug. 29, 2000
France	6,286,288	Sep. 11, 2001

The Rejections on Appeal

The Examiner rejected claims 1-2, 4-5, 10, 13, 15-16, and 18-20 under 35 U.S.C. § 102(b) as anticipated by Mucaria. The Examiner rejected claim 3 under 35 U.S.C. § 103(a) as unpatentable over Mucaria in view of France. The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as unpatentable over Mucaria in view of France and Hood. The Examiner rejected claims 7-9, 12, and 14 under 35 U.S.C. § 103(a) as unpatentable over Mucaria in view of Hood. The Examiner rejected claim 11 under 35 U.S.C. § 103(a) as unpatentable over Mucaria in view of Smith. The Examiner rejected claim 17 under 35 U.S.C. § 103(a) as unpatentable over Mucaria in view of Ford.

The Invention

The invention relates to an impact resistant glass structure having three distinct spaced apart layers, wherein the third layer has a laminate film. (Spec. ¶¶ 0005-6; App. Br. Claims App'x, p. 9).²

Appellants provide arguments for independent claim 1 and state that the remaining claims, 2-20, are patentable for the same reasons. (App. Br., pp. 6-8). Claim 1 is representative of the claimed invention and is reproduced below:

1. An impact resistant glass structure comprising:
 - a generally planar glass first layer having an outer edge;
 - a generally planar impact resistant plastic second layer spaced from and substantially parallel with said first layer, said second layer having an outer edge;
 - a generally planar glass third layer with a laminate film disposed on a surface thereof spaced from and substantially parallel with said first layer and said second layer, said third layer having an outer edge;
 - a first spacer disposed between said first layer and said second layer adjacent the respective outer edges thereof; and
 - a second spacer disposed between said second layer and said third layer adjacent the respective outer edges thereof, wherein the outer edge of said first layer, the outer edge of said second layer, and the outer edge of said third layer are adapted to be disposed in a window casing.

(App. Br. Claims App'x, p. 9).

B. ISSUE

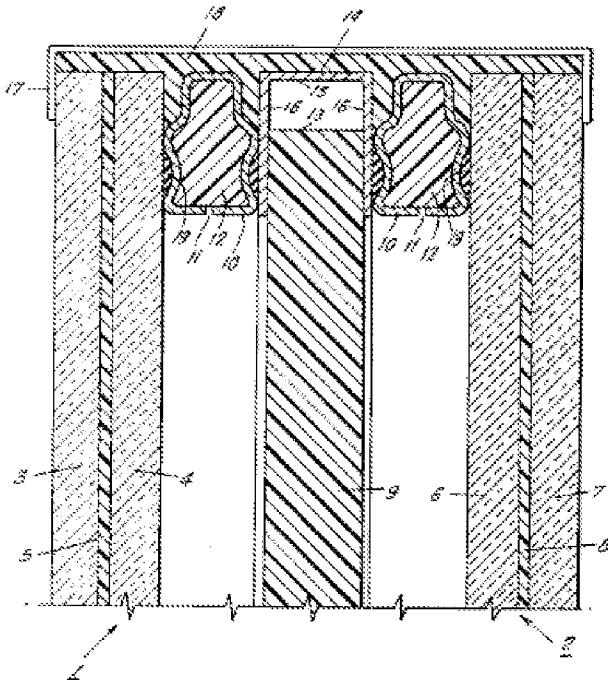
Have Appellants demonstrated that their claims exclude additional glass layers?

² References to the specification are to U.S. Publication 2005/0126091.

C. FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Mucaria discloses a glass unit including a plurality of layers. (Mucaria, col. 1, ll. 50-56).
2. Mucaria's only Figure, reproduced below, depicts the glass unit and shows the plurality of layers.



Mucaria's Figure is reproduced above and depicts the glass unit and shows the plurality of layers. (*Id.* at Figure).

3. Mucaria teaches two generally planar laminated glass layers 1 and 2. (*Id.* at col. 1, ll. 61-66).
4. The laminated glass layers are formed having two glass layers separated by a polyvinyl butyral (lamine) layer. Specifically, laminated

glass layer 1 has two glass layers 3 and 4 separated by a laminate layer 5 and laminated glass layer 2 has two glass layers 6 and 7 separated by laminate layer 8. (*Id.* at Figure, col. 1, ll. 66 to col. 2, ll. 11).

5. In addition to the structure recited in Appellants' claims, Mucaria describes a first layer having an additional laminate film 5 and glass layer 3 and a third layer that has an additional glass layer 7. (*Id.*).

D. PRINCIPLES OF LAW

We give claims their broadest reasonable interpretation consistent with the specification. *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989). Comprising is a term of art used in claim language to signify that a claim is inclusive or open-ended and does not exclude the presence of additional, unrecited elements. *CIAS, Inc. v. Alliance Gaming Corp.*, 504 F.3d 1356, 1360-61 (Fed. Cir. 2007). As such, a comprising claim is anticipated when each and every element as set forth in the claim is found even though the prior art may include an additional element. *Medichem, S.A. v. Rolabo S.L.*, 353 F.3d 928, 934-35 (Fed. Cir. 2003).

E. ANALYSIS

As discussed above, Appellants argued the patentability of all of their claims, claims 1-20, as standing with independent claim 1. Independent claim 1, along with claims 2, 4-5, 10, 13, 15-16, and 18-20, was rejected under 35 U.S.C. § 102(b) as anticipated by Mucaria.

The Examiner found that Mucaria teaches a glass structure meeting all of the limitations of claim 1. (Ans., pp. 3-5 and 10-11). For example, the

Examiner found that Mucaria teaches a first glass layer, a plastic second layer and a third layer having a laminate film 8. (*Id.*).

Appellants contend that the Examiner's findings were improper. (App. Br., pp. 5-6). Appellants acknowledge that both Appellants and Mucaria are directed to an impact resistant glass structure having a plurality of layers. (*Id.* at p. 5). Appellants, however, contend that Mucaria requires laminated glass layers whereas Appellants' claims are directed to a laminated film. Specifically, Appellants state that laminated glass is glass made with plates of plastic or resin between two sheets of glass whereas a "film" is a substance spread over a single surface. (*Id.* at 6). Appellants attempt to distinguish their claims by stating that neither their first, second nor third layer include a laminated glass structure, as their invention is a laminated film. (*Id.* at pp. 5-6). The Examiner disagrees and determined that Appellants' laminate film does not need to be open on one side and instead may be sandwiched between two glass layers. (Ans., pp. 10-11).

Mucaria describes a glass structure having a first glass layer 3, a second plastic layer 9 and a third layer having a laminate film disposed thereon 6 and 8. Mucaria's structure differs from that of Appellants' in that Mucaria's first and third layers include additional layers. Specifically, Mucaria's structure describes a first layer having additional laminate film and glass layers and Mucaria's third layer includes an additional glass layer. (FF 5).

Appellants have not demonstrated that a film ceases to be a film simply because another layer is placed on top of the film. Moreover, Appellants have also failed to demonstrate that Mucaria's additional layers are excluded from its "comprising" transition language. We find that

Appellants have not demonstrated that the Examiner erred in finding that Mucaria describes Appellants' claimed structure because Appellants' claims do not exclude the presence of the additional layers, e.g., a glass layer overlying the laminated film.

F. CONCLUSION

Appellants have not demonstrated that their claims exclude additional glass layers.

H. ORDER

The rejection of claims 1-2, 4-5, 10, 13, 15-16, and 18-20 under 35 U.S.C. § 102(b) as anticipated by Mucaria are affirmed.

The rejection of claim 3 under 35 U.S.C. § 103(a) as unpatentable over Mucaria in view of France is affirmed.

The rejection of claim 6 under 35 U.S.C. § 103(a) as unpatentable over Mucaria in view of France and Hood is affirmed.

The rejection of claims 7-9, 12, and 14 under 35 U.S.C. § 103(a) as unpatentable over Mucaria in view of Hood are affirmed.

The rejection of claim 11 under 35 U.S.C. § 103(a) as unpatentable over Mucaria in view of Smith is affirmed.

The rejection of claim 17 under 35 U.S.C. § 103(a) as unpatentable over Mucaria in view of Ford is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2009-006144
Application 10/734,836

AFFIRMED

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cc:

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